

## HOUSE BILL NO. 178

INTRODUCED BY J. TAYLOR

BY REQUEST OF THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE LAWS RELATING TO WATER USE; CHANGING THE NAME OF THE WATER RIGHT TRANSFER CERTIFICATE TO THE WATER RIGHT OWNERSHIP UPDATE FORM; CLARIFYING THAT THE DEFINITION OF "APPROPRIATE" MEANS THE USE OF WATER FOR A BENEFICIAL USE; PROVIDING THAT TEMPORARY CHANGES OR LEASES FOR INSTREAM FLOW TO MAINTAIN OR ENHANCE INSTREAM FLOW TO BENEFIT THE FISHERY RESOURCE IS AN APPROPRIATION; CLARIFYING THAT CERTAIN ACTIONS ON AN APPLICATION FOR A CHANGE IN APPROPRIATION RIGHT ARE THE SAME AS ACTIONS ON AN APPLICATION FOR A PERMIT; CLARIFYING THAT REVOCATION OR MODIFICATION APPLIES TO CHANGES IN APPROPRIATION RIGHTS; ELIMINATING THE REQUIREMENT THAT THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION NOTIFY THE COUNTY CLERK AND RECORDER OF EACH TRANSFER FILED; ELIMINATING THE REQUIREMENT THAT THE DEPARTMENT PROVIDE AN ADEQUATE SUPPLY OF WATER RIGHT TRANSFER CERTIFICATE FORMS TO EACH COUNTY CLERK AND RECORDER IN THE STATE; ELIMINATING THE REQUIREMENT THAT UPON REQUEST OF THE DEPARTMENT THE COUNTY CLERK AND RECORDER SHALL SEND TO THE DEPARTMENT A COPY OF ANY REALTY TRANSFER CERTIFICATES THAT DISCLOSE A TRANSFER OF WATER RIGHTS; ELIMINATING THE ADJUSTMENT OF FEES TO COVER THE COSTS INCURRED BY THE COUNTY CLERK AND RECORDERS IN PROCESSING WATER RIGHT OWNERSHIP UPDATE FORMS; AMENDING SECTIONS 15-7-305, 15-7-308, 85-2-102, 85-2-117, 85-2-307, 85-2-308, 85-2-310, 85-2-314, 85-2-316, 85-2-421, 85-2-423, 85-2-424, 85-2-426, AND 85-2-431, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

**Section 1.** Section 15-7-305, MCA, is amended to read:

**"15-7-305. Realty transfer certificate required.** (1) The county clerk and recorder shall require the parties to the transaction or their agents or representatives to complete a certificate declaring the consideration paid or to be paid for the real estate transferred.

(2) An instrument or deed evidencing a transfer of real estate may not be accepted for recordation until the certificate has been received by the county clerk and recorder. The validity or effectiveness of an instrument or deed between the parties to it is not affected by failure to comply with the provisions in this part.

(3) (a) Except as provided in 85-2-423, the form of certificate must be prescribed by the department of revenue, and the department shall provide an adequate supply of forms to each county clerk and recorder in the state.

(b) The department shall coordinate with the department of natural resources and conservation and the water court to develop and provide the water right ownership update forms required under 85-2-423 and this part. The water right ownership update form must be part of or attached to the realty transfer certificate.

(4) The clerk and recorder shall prepare a certificate for each contract for deed filed for recording.

(5) The clerk and recorder shall transmit each executed certificate to the department."

**Section 2.** Section 15-7-308, MCA, is amended to read:

**"15-7-308. Disclosure of information restricted -- ~~water right transfer certificate~~ ownership update form exception.** (1) Except as provided in subsection (2), the certificate required by this part and the information contained in the certificate is not a public record and must be held confidential by the county clerk and recorder and the department. This is because the legislature finds that the demands of individual privacy outweigh the merits of public disclosure. The confidentiality provisions do not apply to compilations from the certificates or to summaries, analyses, and evaluations based upon the compilations.

(2) The confidentiality provisions of this section do not apply to the information in the clerk and recorder's abbreviated copy of the realty transfer certificate or to the information contained in the ~~water right transfer certificate~~ ownership update form prepared and filed with the department of natural resources and conservation pursuant to 85-2-424 for purposes of maintaining a system of centralized water right records as mandated by Article IX, section 3(4), of the Montana constitution. A person may access water right transfer information through the department of natural resources and conservation pursuant to the department's implementation of the requirements of 85-2-112(3)."

**Section 3.** Section 85-2-102, MCA, is amended to read:

**"85-2-102. (Temporary) Definitions.** Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Appropriate" means:

(a) to divert, impound, or withdraw, ~~(including by stock for stock water),~~ a quantity of water for a beneficial use;

(b) in the case of a public agency, to reserve water in accordance with 85-2-316;

(c) in the case of the department of fish, wildlife, and parks, to lease water in accordance with 85-2-436;

~~or~~

(d) in the Upper Clark Fork River basin, to maintain and enhance streamflows to benefit the fishery resource in accordance with 85-2-439; or

(e) temporary changes or leases for instream flow to maintain or enhance instream flow to benefit the fishery resource in accordance with 85-2-408.

(2) "Beneficial use", unless otherwise provided, means:

(a) a use of water for the benefit of the appropriator, other persons, or the public, including but not limited to agricultural (including stock water), domestic, fish and wildlife, industrial, irrigation, mining, municipal, power, and recreational uses;

(b) a use of water appropriated by the department for the state water leasing program under 85-2-141 and of water leased under a valid lease issued by the department under 85-2-141;

(c) a use of water by the department of fish, wildlife, and parks pursuant to a lease authorized under 85-2-436; ~~or~~

(d) a use of water to maintain and enhance streamflows to benefit the fishery resource in the Upper Clark Fork River basin as part of the Upper Clark Fork River basin instream flow pilot program authorized under 85-2-439; or

(e) a use of water through a temporary change or lease to enhance instream flow to benefit the fishery resource in accordance with 85-2-408.

(3) "Certificate" means a certificate of water right issued by the department.

(4) "Change in appropriation right" means a change in the place of diversion, the place of use, the purpose of use, or the place of storage.

(5) "Commission" means the fish, wildlife, and parks commission provided for in 2-15-3402.

(6) "Correct and complete" means that the information required to be submitted conforms to the standard of substantial credible information and that all of the necessary parts of the form requiring the information have been filled in with the required information.

(7) "Declaration" means the declaration of an existing right filed with the department under section 8, Chapter 452, Laws of 1973.

(8) "Department" means the department of natural resources and conservation provided for in Title 2, chapter 15, part 33.

(9) "Developed spring" means any artificial opening or excavation in the ground, however made, including any physical alteration at the point of discharge regardless of whether it results in any increase in the yield of ground water, from which ground water is sought or can be obtained or through which it flows under natural pressures or is artificially withdrawn.

(10) "Existing right" or "existing water right" means a right to the use of water that would be protected under the law as it existed prior to July 1, 1973. The term includes federal non-Indian and Indian reserved water rights created under federal law and water rights created under state law.

(11) "Ground water" means any water that is beneath the ground surface.

(12) "Late claim" means a claim to an existing right forfeited pursuant to the conclusive presumption of abandonment under 85-2-226.

(13) "Permit" means the permit to appropriate issued by the department under 85-2-301 through 85-2-303 and 85-2-306 through 85-2-314.

(14) "Person" means an individual, association, partnership, corporation, state agency, political subdivision, the United States or any agency of the United States, or any other entity.

(15) "Political subdivision" means any county, incorporated city or town, public corporation, or district created pursuant to state law or other public body of the state empowered to appropriate water. The term does not mean a private corporation, association, or group.

(16) "Salvage" means to make water available for beneficial use from an existing valid appropriation through application of water-saving methods.

(17) "State water reservation" means a water right created under state law after July 1, 1973, that reserves water for existing or future beneficial uses or that maintains a minimum flow, level, or quality of water throughout the year or at periods or for defined lengths of time.

(18) "Substantial credible information" means probable, believable facts sufficient to support a reasonable legal theory upon which the department should proceed with the action requested by the person providing the information.

(19) "Waste" means the unreasonable loss of water through the design or negligent operation of an

appropriation or water distribution facility or the application of water to anything but a beneficial use.

(20) "Water" means all water of the state, surface and subsurface, regardless of its character or manner of occurrence, including but not limited to geothermal water, diffuse surface water, and sewage effluent.

(21) "Water division" means a drainage basin as defined in 3-7-102.

(22) "Water judge" means a judge as provided for in Title 3, chapter 7.

(23) "Water master" means a master as provided for in Title 3, chapter 7.

(24) "Watercourse" means any naturally occurring stream or river from which water is diverted for beneficial uses. It does not include ditches, culverts, or other constructed waterways.

(25) "Well" means any artificial opening or excavation in the ground, however made, by which ground water is sought or can be obtained or through which it flows under natural pressures or is artificially withdrawn. (Terminates June 30, 2005--sec. 14, Ch. 487, L. 1995.)

**85-2-102. (Effective July 1, 2005) Definitions.** Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Appropriate" means:

(a) to divert, impound, or withdraw, (including by stock for stock water), a quantity of water for beneficial use;

(b) in the case of a public agency, to reserve water in accordance with 85-2-316; or

(c) in the case of the department of fish, wildlife, and parks, to lease water in accordance with 85-2-436.

(2) "Beneficial use", unless otherwise provided, means:

(a) a use of water for the benefit of the appropriator, other persons, or the public, including but not limited to agricultural (including stock water), domestic, fish and wildlife, industrial, irrigation, mining, municipal, power, and recreational uses;

(b) a use of water appropriated by the department for the state water leasing program under 85-2-141 and of water leased under a valid lease issued by the department under 85-2-141; ~~and~~ or

(c) a use of water by the department of fish, wildlife, and parks pursuant to a lease authorized under 85-2-436.

(3) "Certificate" means a certificate of water right issued by the department.

(4) "Change in appropriation right" means a change in the place of diversion, the place of use, the purpose of use, or the place of storage.

(5) "Commission" means the fish, wildlife, and parks commission provided for in 2-15-3402.

(6) "Correct and complete" means that the information required to be submitted conforms to the standard of substantial credible information and that all of the necessary parts of the form requiring the information have been filled in with the required information.

(7) "Declaration" means the declaration of an existing right filed with the department under section 8, Chapter 452, Laws of 1973.

(8) "Department" means the department of natural resources and conservation provided for in Title 2, chapter 15, part 33.

(9) "Developed spring" means any artificial opening or excavation in the ground, however made, including any physical alteration at the point of discharge regardless of whether it results in any increase in the yield of ground water, from which ground water is sought or can be obtained or through which it flows under natural pressures or is artificially withdrawn.

(10) "Existing right" or "existing water right" means a right to the use of water that would be protected under the law as it existed prior to July 1, 1973. The term includes federal non-Indian and Indian reserved water rights created under federal law and water rights created under state law.

(11) "Ground water" means any water that is beneath the ground surface.

(12) "Late claim" means a claim to an existing right forfeited pursuant to the conclusive presumption of abandonment under 85-2-226.

(13) "Permit" means the permit to appropriate issued by the department under 85-2-301 through 85-2-303 and 85-2-306 through 85-2-314.

(14) "Person" means an individual, association, partnership, corporation, state agency, political subdivision, the United States or any agency of the United States, or any other entity.

(15) "Political subdivision" means any county, incorporated city or town, public corporation, or district created pursuant to state law or other public body of the state empowered to appropriate water. The term does not mean a private corporation, association, or group.

(16) "Salvage" means to make water available for beneficial use from an existing valid appropriation through application of water-saving methods.

(17) "State water reservation" means a water right created under state law after July 1, 1973, that reserves water for existing or future beneficial uses or that maintains a minimum flow, level, or quality of water throughout the year or at periods or for defined lengths of time.

(18) "Substantial credible information" means probable, believable facts sufficient to support a

reasonable legal theory upon which the department should proceed with the action requested by the person providing the information.

(19) "Waste" means the unreasonable loss of water through the design or negligent operation of an appropriation or water distribution facility or the application of water to anything but a beneficial use.

(20) "Water" means all water of the state, surface and subsurface, regardless of its character or manner of occurrence, including but not limited to geothermal water, diffuse surface water, and sewage effluent.

(21) "Water division" means a drainage basin as defined in 3-7-102.

(22) "Water judge" means a judge as provided for in Title 3, chapter 7.

(23) "Water master" means a master as provided for in Title 3, chapter 7.

(24) "Watercourse" means any naturally occurring stream or river from which water is diverted for beneficial uses. It does not include ditches, culverts, or other constructed waterways.

(25) "Well" means any artificial opening or excavation in the ground, however made, by which ground water is sought or can be obtained or through which it flows under natural pressures or is artificially withdrawn. (Terminates June 30, 2009--sec. 9, Ch. 123, L. 1999.)

**85-2-102. (Effective July 1, 2009) Definitions.** Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Appropriate" means:

(a) to divert, impound, or withdraw, ~~{including by stock for stock water}~~, a quantity of water for beneficial use; or

(b) in the case of a public agency, to reserve water in accordance with 85-2-316.

(2) "Beneficial use", unless otherwise provided, means:

(a) a use of water for the benefit of the appropriator, other persons, or the public, including but not limited to agricultural (including stock water), domestic, fish and wildlife, industrial, irrigation, mining, municipal, power, and recreational uses; or

(b) a use of water appropriated by the department for the state water leasing program under 85-2-141 and of water leased under a valid lease issued by the department under 85-2-141.

(3) "Certificate" means a certificate of water right issued by the department.

(4) "Change in appropriation right" means a change in the place of diversion, the place of use, the purpose of use, or the place of storage.

(5) "Correct and complete" means that the information required to be submitted conforms to the

1 standard of substantial credible information and that all of the necessary parts of the form requiring the  
2 information have been filled in with the required information.

3 (6) "Declaration" means the declaration of an existing right filed with the department under section 8,  
4 Chapter 452, Laws of 1973.

5 (7) "Department" means the department of natural resources and conservation provided for in Title 2,  
6 chapter 15, part 33.

7 (8) "Developed spring" means any artificial opening or excavation in the ground, however made,  
8 including any physical alteration at the point of discharge regardless of whether it results in any increase in the  
9 yield of ground water, from which ground water is sought or can be obtained or through which it flows under  
10 natural pressures or is artificially withdrawn.

11 (9) "Existing right" or "existing water right" means a right to the use of water that would be protected  
12 under the law as it existed prior to July 1, 1973. The term includes federal non-Indian and Indian reserved water  
13 rights created under federal law and water rights created under state law.

14 (10) "Ground water" means any water that is beneath the ground surface.

15 (11) "Late claim" means a claim to an existing right forfeited pursuant to the conclusive presumption of  
16 abandonment under 85-2-226.

17 (12) "Permit" means the permit to appropriate issued by the department under 85-2-301 through  
18 85-2-303 and 85-2-306 through 85-2-314.

19 (13) "Person" means an individual, association, partnership, corporation, state agency, political  
20 subdivision, the United States or any agency of the United States, or any other entity.

21 (14) "Political subdivision" means any county, incorporated city or town, public corporation, or district  
22 created pursuant to state law or other public body of the state empowered to appropriate water. The term does  
23 not mean a private corporation, association, or group.

24 (15) "Salvage" means to make water available for beneficial use from an existing valid appropriation  
25 through application of water-saving methods.

26 (16) "State water reservation" means a water right created under state law after July 1, 1973, that  
27 reserves water for existing or future beneficial uses or that maintains a minimum flow, level, or quality of water  
28 throughout the year or at periods or for defined lengths of time.

29 (17) "Substantial credible information" means probable, believable facts sufficient to support a  
30 reasonable legal theory upon which the department should proceed with the action requested by the person



1 providing the information.

2 (18) "Waste" means the unreasonable loss of water through the design or negligent operation of an  
3 appropriation or water distribution facility or the application of water to anything but a beneficial use.

4 (19) "Water" means all water of the state, surface and subsurface, regardless of its character or manner  
5 of occurrence, including but not limited to geothermal water, diffuse surface water, and sewage effluent.

6 (20) "Water division" means a drainage basin as defined in 3-7-102.

7 (21) "Water judge" means a judge as provided for in Title 3, chapter 7.

8 (22) "Water master" means a master as provided for in Title 3, chapter 7.

9 (23) "Watercourse" means any naturally occurring stream or river from which water is diverted for  
10 beneficial uses. It does not include ditches, culverts, or other constructed waterways.

11 (24) "Well" means any artificial opening or excavation in the ground, however made, by which ground  
12 water is sought or can be obtained or through which it flows under natural pressures or is artificially withdrawn."  
13

14 **Section 4.** Section 85-2-117, MCA, is amended to read:

15 **"85-2-117. Water right records for filing with local clerk and recorder.** Upon payment of a fee  
16 established pursuant to 85-2-113, a county clerk and recorder of the county where the point of diversion or place  
17 of use is located or in which a transfer of water right occurred may require the department to provide a report  
18 of all water permits, certificates, change approvals, or water right ~~transfer certificates~~ ownership update forms  
19 issued or processed by the department pursuant to Title 85, chapter 2, parts 3 and 4."  
20

21 **Section 5.** Section 85-2-307, MCA, is amended to read:

22 **"85-2-307. Notice of application for permit or change in appropriation right.** (1) (a) Upon receipt  
23 of a correct and complete application for a permit or change in appropriation right, the department shall prepare  
24 a notice containing the facts pertinent to the application and shall publish the notice once in a newspaper of  
25 general circulation in the area of the source.

26 (b) Before the date of publication, the department shall also serve the notice by first-class mail upon:

27 (i) an appropriator of water or applicant for or holder of a permit who, according to the records of the  
28 department, may be affected by the proposed appropriation;

29 (ii) any purchaser under contract for deed, as defined in 70-20-115, of property that, according to the  
30 records of the department, may be affected by the proposed appropriation; and

(iii) any public agency that has reserved waters in the source under 85-2-316.

(c) The department may, in its discretion, also serve notice upon any state agency or other person the department feels may be interested in or affected by the proposed appropriation.

(d) The department shall file in its records proof of service by affidavit of the publisher in the case of notice by publication and by its own affidavit in the case of service by mail.

(2) The notice shall state that by a date set by the department (not less than 15 days or more than 60 days after the date of publication) persons may file with the department written objections to the application.

(3) The requirements of subsections (1) and (2) of this section do not apply if the department finds, on the basis of information reasonably available to it, that the appropriation as proposed in the application will not adversely affect the rights of other persons."

**Section 6.** Section 85-2-308, MCA, is amended to read:

**"85-2-308. Objections.** (1) (a) An objection to an application under this chapter ~~for a permit~~ must be filed by the date specified by the department under 85-2-307(2).

(b) The objection to an application for a permit must state the name and address of the objector and facts indicating that one or more of the criteria in 85-2-311 are not met.

(2) For an application for a change in appropriation rights, the objection must state the name and address of the objector and facts indicating that one or more of the criteria in 85-2-402 are not met.

(3) A person has standing to file an objection under this section if the property, water rights, or interests of the objector would be adversely affected by the proposed appropriation.

(4) For an application for a reservation of water, the objection must state the name and address of the objector and facts indicating that one or more of the criteria in 85-2-316 are not met.

(5) An objector to an application under this chapter shall file a correct and complete objection on a form prescribed by the department within the time period stated on the public notice associated with the application. In order to assist both applicants and objectors, the department shall adopt rules in accordance with this chapter delineating the components of a correct and complete objection. For instream flow water rights for fish, wildlife, and recreation, the rules must require the objector to describe the reach or portion of the reach of the stream or river subject to the instream flow water right and the beneficial use that is adversely affected and to identify the point or points where the instream flow water right is measured and monitored. The department shall notify the objector of any defects in an objection. An objection not corrected or completed within 15 days from the date

1 of notification of the defects is terminated.

2 (6) An objection is valid if the objector has standing pursuant to subsection (3), has filed a correct and  
3 complete objection within the prescribed time period, and has stated the applicable information required under  
4 this section and rules of the department."  
5

6 **Section 7.** Section 85-2-310, MCA, is amended to read:

7 **"85-2-310. Action on application for permit or change in appropriation right.** (1) The department  
8 shall grant, deny, or condition an application for a permit or change in appropriation right in whole or in part  
9 within 120 days after the last date of publication of the notice of application if no objections have been received  
10 and within 180 days if a hearing is held or objections have been received. However, in either case the time may  
11 be extended upon agreement of the applicant; or, in those cases where an environmental impact statement must  
12 be prepared or in other extraordinary cases, may be extended by not more than 60 days upon order of the  
13 department. If the department orders the time extended, it shall serve a notice of the extension and the reasons  
14 for the extension by first-class mail upon the applicant and each person who has filed an objection as provided  
15 by 85-2-308.

16 (2) However, an application may not be denied or approved in a modified form or upon terms,  
17 conditions, or limitations specified by the department ~~or denied~~, unless the applicant is first granted an  
18 opportunity to be heard. If no objection is filed against the application but the department is of the opinion that  
19 the application should be denied or approved in a modified form or upon terms, conditions, or limitations  
20 specified by it ~~or that the application should be denied~~, the department shall prepare a statement of its opinion  
21 and its reasons for the opinion. The department shall serve a statement of its opinion by first-class mail upon  
22 the applicant, with a notice that the applicant may obtain a hearing by filing a request within 30 days after the  
23 notice is mailed. The notice must further state that the application will be modified in a specified manner or  
24 denied; unless a hearing is requested.

25 (3) The department may cease action upon an application for a permit or change in appropriation right  
26 and return it to the applicant when it finds that the application is not in good faith or does not show a bona fide  
27 intent to appropriate water for a beneficial use. An application returned for either of these reasons must be  
28 accompanied by a statement of the reasons for which it was returned, and for a permit application there is not  
29 a right to a priority date based upon the filing of the application. Returning an application pursuant to this  
30 subsection is a final decision of the department.

(4) For all applications filed after July 1, 1973, the department shall find that an application is not in good faith or does not show a bona fide intent to appropriate water for a beneficial use if:

(a) an application is not corrected and completed as required by 85-2-302;

(b) the appropriate filing fee is not paid;

(c) the application does not document:

(i) a beneficial use of water;

(ii) the proposed place of use of all water applied for;

(iii) for an appropriation of 4,000 acre-feet a year or more and 5.5 cubic feet per second or more, a detailed project plan describing when and how much water will be put to a beneficial use. The project plan must include a reasonable timeline for the completion of the project and the actual application of the water to a beneficial use.

(iv) for appropriations not covered in subsection (4)(c)(iii), a general project plan stating when and how much water will be put to a beneficial use; and

(v) if the water applied for is to be appropriated above that which will be used solely by the applicant or if it will be marketed by the applicant to other users, information detailing:

(A) each person who will use the water and the amount of water each person will use;

(B) the proposed place of use of all water by each person;

(C) the nature of the relationship between the applicant and each person using the water; and

(D) each firm contractual agreement for the specified amount of water for each person using the water;

or

(d) the appropriate environmental impact statement fee, if any, is not paid as required by 85-2-124."

**Section 8.** Section 85-2-314, MCA, is amended to read:

**"85-2-314. Revocation or modification of permit or change in appropriation right.** If the work on an appropriation is not commenced, prosecuted, or completed within the time stated in the permit or an extension ~~thereof or~~ of the time stated in the permit, if the water is not being applied to the beneficial use contemplated in the permit or change in appropriation right, or if the permit or change in appropriation right is otherwise not being followed, the department may, after notice, require the permittee or the holder of the change in appropriation right to show cause why the permit or change in appropriation right should not be modified or revoked. If the permittee or holder of the change in appropriation right fails to show sufficient cause, the

department may modify or revoke the permit or change in appropriation right."

**Section 9.** Section 85-2-316, MCA, is amended to read:

**"85-2-316. State reservation of waters.** (1) The state, any political subdivision or agency of the state, or the United States or any agency of the United States may apply to the department to acquire a state water reservation for existing or future beneficial uses or to maintain a minimum flow, level, or quality of water throughout the year or at periods or for a length of time that the department designates.

(2) (a) Water may be reserved for existing or future beneficial uses in the basin where it is reserved, as described by the following basins:

- (i) the Clark Fork River and its tributaries to its confluence with Lake Pend Oreille in Idaho;
- (ii) the Kootenai River and its tributaries to its confluence with Kootenay Lake in British Columbia;
- (iii) the St. Mary River and its tributaries to its confluence with the Oldman River in Alberta;
- (iv) the Little Missouri River and its tributaries to its confluence with Lake Sakakawea in North Dakota;
- (v) the Missouri River and its tributaries to its confluence with the Yellowstone River in North Dakota;

and

- (vi) the Yellowstone River and its tributaries to its confluence with the Missouri River in North Dakota.

(b) A state water reservation may be made for an existing or future beneficial use outside the basin where the diversion occurs only if stored water is not reasonably available for water leasing under 85-2-141 and the proposed use would occur in a basin designated in subsection (2)(a).

(3) Upon receiving a correct and complete application, the department shall proceed in accordance with 85-2-307 through 85-2-309. After the hearing provided for in 85-2-309, the department shall decide whether to reserve the water for the applicant. The department's costs of giving notice, holding the hearing, conducting investigations, and making records incurred in acting upon the application to reserve water, except the cost of salaries of the department's personnel, must be paid by the applicant. In addition, a reasonable proportion of the department's cost of preparing an environmental impact statement must be paid by the applicant unless waived by the department upon a showing of good cause by the applicant.

(4) (a) The department may not adopt an order reserving water unless the applicant establishes to the satisfaction of the department by a preponderance of evidence:

- (i) the purpose of the reservation;
- (ii) the need for the reservation;

1 (iii) the amount of water necessary for the purpose of the reservation;

2 (iv) that the reservation is in the public interest.

3 (b) In determining the public interest under subsection (4)(a)(iv), the department may not adopt an order  
4 reserving water for withdrawal and transport for use outside the state unless the applicant proves by clear and  
5 convincing evidence that:

6 (i) the proposed out-of-state use of water is not contrary to water conservation in Montana; and

7 (ii) the proposed out-of-state use of water is not otherwise detrimental to the public welfare of the citizens  
8 of Montana.

9 (c) In determining whether the applicant has proved by clear and convincing evidence that the  
10 requirements of subsections (4)(b)(i) and (4)(b)(ii) are met, the department shall consider the following factors:

11 (i) whether there are present or projected water shortages within the state of Montana;

12 (ii) whether the water that is the subject of the application could feasibly be transported to alleviate water  
13 shortages within the state of Montana;

14 (iii) the supply and sources of water available to the applicant in the state where the applicant intends  
15 to use the water; and

16 (iv) the demands placed on the applicant's supply in the state where the applicant intends to use the  
17 water.

18 (d) When applying for a state water reservation to withdraw and transport water for use outside the  
19 state, the applicant shall submit to and comply with the laws of the state of Montana governing the appropriation,  
20 lease, use, and reservation of water.

21 (5) If the purpose of the state water reservation requires construction of a storage or diversion facility,  
22 the applicant shall establish to the satisfaction of the department by a preponderance of evidence that there will  
23 be progress toward completion of the facility and accomplishment of the purpose with reasonable diligence in  
24 accordance with an established plan.

25 (6) The department shall limit any state water reservations after May 9, 1979, for maintenance of  
26 minimum flow, level, or quality of water that it awards at any point on a stream or river to a maximum of 50% of  
27 the average annual flow of record on gauged streams. Ungauged streams may be allocated at the discretion  
28 of the department.

29 (7) After the adoption of an order reserving waters, the department may reject an application and refuse  
30 a permit for the appropriation of reserved waters or may issue the permit subject to terms and conditions that

1 it considers necessary for the protection of the objectives of the reservation.

2 (8) (a) A person desiring to use water reserved to a conservation district for agricultural purposes shall  
3 make application for the use with the district, and the district, upon approval of the application, shall inform the  
4 department of the approved use and issue the applicant an authorization for the use. The department shall  
5 maintain records of all uses of water reserved to conservation districts and be responsible, when requested by  
6 the districts, for rendering technical and administrative assistance within the department's staffing and budgeting  
7 limitations in the preparation and processing of the applications for the conservation districts. The department  
8 shall, within its staffing and budgeting limitations, complete any feasibility study requested by the districts within  
9 12 months of the time that the request was made. The department shall extend the time allowed to develop a  
10 plan identifying projects for using a district's reservation as long as the conservation district makes a good faith  
11 effort, within its staffing and budget limitations, to develop a plan.

12 (b) Upon actual application of water to the proposed beneficial use, the authorized user shall notify the  
13 conservation district. The notification must contain a certified statement by a person with experience in the  
14 design, construction, or operation of project works for agricultural purposes describing how the reserved water  
15 was put to use. The department or the district may then inspect the appropriation to determine if it has been  
16 completed in substantial accordance with the authorization.

17 (9) Except as provided in 85-2-331, the priority of appropriation of a state water reservation and the  
18 relative priority of the reservation to permits with a later priority of appropriation must be determined according  
19 to this subsection (9), as follows:

20 (a) A state water reservation under this section has a priority of appropriation dating from the filing with  
21 the department of a notice of intention to apply for a state water reservation in a basin in which no other notice  
22 of intention to apply is currently pending. The notice of intention to apply must specify the basin in which the  
23 applicant is seeking a state water reservation.

24 (b) Upon receiving a notice of intention to apply for a state water reservation, the department shall  
25 identify all potential state water reservation applicants in the basin specified in the notice and notify each  
26 potential applicant of the opportunity to submit an application and to receive a state water reservation with the  
27 priority of appropriation as described in subsection (9)(a).

28 (c) To receive the priority of appropriation described in subsection (9)(a), the applicant shall submit a  
29 correct and complete state water reservation application within 1 year after the filing of the notice of intention  
30 to apply. Upon a showing of good cause, the department may extend the time for preparing the application.

1 (d) The department may by order subordinate a state water reservation to a permit or a certificate for  
2 ground water development issued pursuant to this part if:

3 (i) the permit application or the notice of completion of ground water development was accepted by the  
4 department before the date of the order granting the reservation;

5 (ii) the effect of subordinating the reservation to one or more permits or certificates for ground water  
6 development does not interfere substantially with the purpose of the reservation; and

7 (iii) in the case of a certificate for ground water development, the reservant consents to the  
8 subordination.

9 (e) The department shall by order establish the relative priority of state water reservations approved  
10 under this section that have the same day of priority. A state water reservation may not adversely affect any  
11 rights in existence at that time.

12 (10) The department shall, periodically but at least once every 10 years, review existing state water  
13 reservations to ensure that the objectives of the reservations are being met. When the objectives of a state water  
14 reservation are not being met, the department may extend, revoke, or modify the reservation. Any undeveloped  
15 water made available as a result of a revocation or modification under this subsection is available for  
16 appropriation by others pursuant to this part.

17 (11) The department may modify an existing or future order originally adopted to reserve water for the  
18 purpose of maintaining minimum flow, level, or quality of water, so as to reallocate the state water reservation  
19 or portion of the reservation to an applicant who is a qualified reservant under this section. Reallocation of water  
20 reserved pursuant to a state water reservation may be made by the department following notice and hearing if  
21 the department finds that all or part of the reservation is not required for its purpose and that the need for the  
22 reallocation has been shown by the applicant to outweigh the need shown by the original reservant. Reallocation  
23 of reserved water may not adversely affect the priority date of the reservation, and the reservation retains its  
24 priority date despite reallocation to a different entity for a different use. The department may not reallocate water  
25 reserved under this section on any stream or river more frequently than once every 5 years.

26 (12) A reservant may not make a change in a state water reservation under this section, except as  
27 permitted under 85-2-402 and this subsection. If the department approves a change, the department shall give  
28 notice and require the reservant to establish that the criteria in subsection (4) will be met under the approved  
29 change.

30 (13) A state water reservation may be transferred to another entity qualified to hold a reservation under



subsection (1). Only the entity holding the reservation may initiate a transfer. The transfer occurs upon the filing of a water right ~~transfer certificate~~ ownership update form with the department, together with an affidavit from the entity receiving the reservation establishing that the entity is a qualified reservant under subsection (1), that the entity agrees to comply with the requirements of this section and the conditions of the reservation, and that the entity can meet the objectives of the reservation as granted. If the transfer of a state water reservation involves a change in an appropriation right, the necessary approvals must be acquired pursuant to subsection (12).

(14) This section does not vest the department with the authority to alter a water right that is not a state water reservation.

(15) The department shall undertake a program to educate the public, other state agencies, and political subdivisions of the state as to the benefits of the state water reservation process and the procedures to be followed to secure the reservation of water. The department shall provide technical assistance to other state agencies and political subdivisions in applying for reservations under this section.

(16) Water reserved under this section is not subject to the state water leasing program established under 85-2-141."

**Section 10.** Section 85-2-421, MCA, is amended to read:

**"85-2-421. Purpose.** The purpose of 85-2-421 through 85-2-424 and 85-2-426 is to facilitate the maintenance of a reliable record of water right ownership ~~on both the state and local levels~~ by requiring that water right ~~transfers~~ ownership update forms be filed with the department and that the department notify the water court ~~and the county clerk and recorder~~ of each transfer water right ownership update form filed."

**Section 11.** Section 85-2-423, MCA, is amended to read:

**"85-2-423. Water right ~~transfer certificate~~ ownership update form.** ~~(1)~~ The chief water judge and the department shall prescribe the form and content of the water right ~~transfer certificate~~ ownership update form.

~~(2) The department shall provide an adequate supply of such forms to each county clerk and recorder in the state."~~

**Section 12.** Section 85-2-424, MCA, is amended to read:

**"85-2-424. Filing.** (1) The transferor of a water right shall file with the department a water right ~~transfer~~

1 ~~certificate~~ ownership update form within 60 days of recording a deed or other instrument evidencing a transfer  
2 of real property.

3 (2) Except in the case of a transfer of real property served by a public service water supply, when any  
4 person presents for recording a deed or other instrument evidencing a transfer of real property, the realty transfer  
5 certificate shall contain a water rights disclosure whereby the transferor shall acknowledge, at or before closing,  
6 whether or not any water rights are associated with the property to be transferred and whether or not any water  
7 rights will transfer with the real property. If the realty transfer certificate discloses a transfer of water rights, a  
8 water right ~~transfer certificate~~ ownership update form must be completed and filed with the department. The  
9 recording of the deed or other instrument may not be delayed because of the transfer of the water rights.

10 ~~(3) Upon request of the department, the county clerk and recorder shall send to the department, on a~~  
11 ~~monthly basis, a copy of the clerk and recorder's copy of any realty transfer certificate that discloses a transfer~~  
12 ~~of water rights."~~

13  
14 **Section 13.** Section 85-2-426, MCA, is amended to read:

15 **"85-2-426. Fee.** (1) The department shall by rule prescribe a fee that will be no higher than necessary  
16 to cover the cost to the department ~~and the county clerk and recorder~~ of processing the ~~transfer certificate~~ water  
17 right ownership update form. The fee must be paid at the time of filing of the water right ~~transfer certificate~~  
18 ownership update form.

19 (2) The fee must be deposited in the water right appropriation account provided for in 85-2-318."  
20

21 **Section 14.** Section 85-2-431, MCA, is amended to read:

22 **"85-2-431. Penalty.** (1) The transferor of a water right is responsible for the filing of a water right  
23 ~~transfer certificate~~ ownership update form with the department in accordance with 85-2-424.

24 (2) The transferor of a water right who violates 85-2-424(1) is liable for a civil penalty of not more than  
25 \$50.

26 (3) An action to recover the penalty must be brought by the department and filed in the district court for  
27 the first judicial district.

28 (4) Any penalty fee collected under this section must be deposited in the water right appropriation  
29 account provided for in 85-2-318."  
30

1        NEW SECTION. Section 15. Saving clause. [This act] does not affect rights and duties that matured,  
2        penalties that were incurred, or proceedings that were begun before [the effective date of this act].

3

4 NEW SECTION. **Section 16. Effective date.** [This act] is effective on passage and approval.

5 - END -